

LEONARD W. COOK)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Decision and Order - Awarding Benefits and the Supplemental Decision and Order Awarding Attorney Fees of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

John F. Dillon (Maples and Lomax, P.A.), Pascagoula, Mississippi, for claimant.

Paul M. Franke, Jr. (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order-Awarding Benefits and the Supplemental Decision and Order Awarding Attorney Fees (88-LHC-3752) of Administrative Law Judge C. Richard Avery rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3). The amount of an attorney's fee award is discretionary and may be set aside only if the challenging party shows it to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant filed a claim under the Act on August 12, 1987, seeking benefits for a noise-induced hearing loss. By letters dated May 11 and 14, 1987, Assistant District Director¹ Robert Bergeron excused employer from filing notices of controversion or making payments in hearing loss claims pursuant to Section 14 of the Act, 33 U.S.C. §914. Employer controverted the claim on January 14, 1988.

The parties stipulated before the administrative law judge that claimant's average weekly wage is \$549.10. The administrative law judge awarded claimant benefits for a 13 percent binaural impairment based on the audiometric examination conducted by Dr. Lamppin. 33 U.S.C. §908(c)(13)(B). The administrative law judge also determined that employer is liable for a ten percent penalty pursuant to Section 14(e) of the Act, 33 U.S.C. §914(e), for failure to timely pay benefits or controvert the claim.

Claimant's counsel thereafter sought an attorney's fee of \$1,875, representing 15 hours at \$125 per hour, plus expenses of \$30.25, for work performed before the administrative law judge. The administrative law judge awarded counsel a fee of \$1,500, representing 15 hours at an hourly rate of \$100. He disallowed the requested expenses.

Employer appeals the administrative law judge's imposition of a Section 14(e) penalty. Claimant responds, urging affirmance of the administrative law judge's Decision and Order. Employer also appeals the administrative law judge's fee award, incorporating by reference the arguments it made below into its appellate brief. Claimant responds, urging affirmance of the fee award.

¹The term "district director" has replaced the term "deputy commissioner" used in the statute. 20 C.F.R. §702.105.

The precise arguments raised by employer regarding the imposition of the Section 14(e) penalty have been rejected by both the Board and the United States Court of Appeals for the Fifth Circuit, in whose jurisdiction the present case arises. See *Ingalls Shipbuilding, Inc. v. Director, OWCP*, 976 F.2d 934, 26 BRBS 107 (CRT) (5th Cir. 1992), *aff'g Benn v. Ingalls Shipbuilding, Inc.*, 25 BRBS 37 (1991); *Ingalls Shipbuilding, Inc. v. Director, OWCP*, 898 F.2d 1088, 23 BRBS 61 (CRT) (5th Cir. 1990), *aff'g in part Fairley v. Ingalls Shipbuilding, Inc.*, 22 BRBS 184 (1989) (*en banc*) (Brown, J., concurring). We, therefore, affirm the administrative law judge's finding that employer is liable for a Section 14(e) assessment.²

With regard to employer's appeal of the attorney's fee award, employer objects to counsel's method of billing in minimum increments of one-quarter hour. The administrative law judge found this method of billing acceptable in this case. Consistent with the decisions of the Fifth Circuit in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. July 25, 1990) (unpublished) and *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, No. 94-40066 (5th Cir. Jan. 12, 1995) (unpublished), we reduce the following entries from one-half hour to one-quarter hour: November 11, 1988, June 15, 1989, June 23, 1989, October 3, 1989, and October 26, 1989. We reduce the following entries from one-quarter hour to one-eighth hour: May 10, 1989 and June 14, 1989.

After considering employer's remaining objections to the number of hours awarded, and to the hourly rate, we reject these contentions, as it has not shown that the administrative law judge abused his discretion in this regard. See *Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995); *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).

Employer's contentions which were not raised below will not be addressed for the first time on appeal. *Bullock v. Ingalls Shipbuilding, Inc.*, 27 BRBS 90 (1993)(*en banc*)(Brown and McGranery, JJ., concurring and dissenting), *modified on other grounds on recon. en banc*, 28 BRBS 102 (1994), *aff'd mem. sub nom. Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995); *Clophus v. Amoco Production Co.*, 21 BRBS 261 (1988).

Accordingly, the administrative law judge's Decision and Order is affirmed. The administrative law judge's Supplemental Decision and Order is modified to reflect claimant's entitlement to an attorney's fee of \$1350 payable by employer.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

²Claimant's Motion to Strike thus is moot.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge